

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Gary Waiters, #273876,	)	
	)	C.A. No. 3:09-2686-JMC
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
Dr. Cross; Mr. Benjamin;	)	
Mrs. Spike; Mr. Marshall; and	)	
Mr. Qumbley, Official and Individual	)	
Capacities	)	
Defendants.	)	
_____	)	

Plaintiff Gary Waiters (“Plaintiff”) brings this action against Defendants claiming constitutional deprivation of medical care with deliberate indifference. On May 28, 2010, Defendants Benjamin, Marshall, and Qumbley filed a Motion for Summary Judgment [Entry # 11]. On July 13, 2010, Plaintiff filed a Motion for Voluntary Dismissal Without Prejudice with respect to all Defendants [Entry # 13].

The Magistrate Judge’s Report and Recommendation [Entry # 17], filed on October 18, 2010, recommends that the Plaintiff’s Motion for Voluntarily Dismissal Without Prejudice [Entry # 13] be granted as to Defendants Cross and Spike and denied as to Defendants Benjamin, Marshall and Qumbley. Furthermore, the Magistrate Judge’s Report and Recommendation [Entry # 17] recommends that Defendants’ Motion for Summary Judgment [Entry # 11] be granted. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation herein without a recitation. The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1)

and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report and Recommendation [Entry # 17, at 10]. Plaintiff filed a Reply [Entry # 19] to the Magistrate Judge's Report and Recommendation on October 28, 2010. In his reply, Plaintiff writes the following: "I am not dismissing ever think [sic] dealing with this case against these people. For one I am my own lawyer and I need to know want [sic] we are going to have a hearing in this case. So like I say I am not dismissing this case." [Entry # 19]. In his reply, Plaintiff has asserted no specific objections to specific portions of the Magistrate Judge's Report and Recommendation. It appears that Plaintiff is attempting to emphasize that he is not dismissing the case.

In the Report and Recommendation, the Magistrate Judge discusses Plaintiff's Motion for Voluntary Dismissal Without Prejudice [Entry # 17, at 2-4] and recommends that this court grant Plaintiff's motion only with respect to Defendants Cross and Spike under Fed. R. Civ. P. 41(a)(1)(A). With respect to Defendants Benjamin, Marshall, and Qumbley, the Magistrate Judge recommends that this court deny Plaintiff's motion because it "was filed after the JCDC Defendants filed an answer and a motion for summary judgment, and [it] was filed after the deadline (July 6, 2010) for Plaintiff to file any opposition to the JCDC Defendants' motion for summary judgment."

[Entry # 17, at 4].

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation [Entry # 17] and incorporates it herein. It is therefore **ORDERED** that Plaintiff's Motion for Voluntarily Dismissal Without Prejudice [Entry # 13] is granted with respect to Defendants Cross and Spike and denied with respect to Defendants Benjamin, Marshall and Qumbley. In addition, Defendants Benjamin, Marshall and Qumbley's Motion for Summary Judgment [Entry # 11] is granted.

**IT IS SO ORDERED.**

s/ J. Michelle Childs  
United States District Judge

Greenville, South Carolina

December 1, 2010